1868. *May* 22. *C. P. No.* 77 *of* 1868.

We were asked to give leave now to file a regular appeal against the decree, the time for appealing having expired. But we think that that must be the subject of a distinct application in the usual course, as to which we can say no more than that the Judges before whom it may be brought will of course take into their consideration all the circumstances connected with this present application, and will have the same means of judging whether they afford a sufficient cause for not having presented the regular appeal in proper time which we have.

Appellate Jurisdiction (*a*)

Special Appeal No. 50 *of* 1868.

J. RAYACHARLU.....*Special Appellant* (*Defendant.*)

J. V. VENKATARAMANIAH.*Special Respondent* (*Plaintiff.*)

A son during the life of his father has, as coparcener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive.

Except in respect of his coparcenery rights a son is not in a different position as to the corpus of the ancestral property from that of any other relation who is an heir apparent of the owner of property.

Though the Limitation Act may have been decided to be a bar to a suit by the son for partition, his right as coparcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his proper share of the property.

1868. *May* 27. *S. A. No.* 50 *of* 1868.

THIS was a special appeal from the decision of E. B. Foord, the Civil Judge of Berhampore, in Regular Appeal No. 16 of 1867, confirming the decree of the Court of the District Munsif of Chicacole, in Original Suit No. 237 of 1864.

Sanjiva Ráo for the special appellant, the defendant.

Snell for the special respondent, the plaintiff.

The facts sufficiently appear in the following

JUDGMENT:—The plaintiff in this case is the only son of the defendant, and the relief sought by the suit is a declaration of the plaintiff's right, on the death of his father, to the whole of the ancestral property movable and

(*a*) Present: Scotland, C. J., and Collett, J.

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immovable now in his father's possession, and that his father may be restrained from dissipating the property. The defence pleaded is, that the defendant possesses the exclusive right to the movable property, that the plaintiff's right to recover a share of the property had been decreed on appeal in a former suit to be barred by lapse of time, and that the produce of the lands is not sufficient to maintain the defendant.

The Original Court decided that the decree in the former suit did not affect the plaintiff's claim as heir on his father's death, and passed a decree declaring the plaintiff's "reversionary" right to the whole of the immovable portion of the property after the defendant's death, and against his right to the movable portion on the ground that the defendant had the absolute right to dispose of such portion.

Both the parties appealed to the Civil Court, and that Court has affirmed the original decree. The special appeal to this Court is by the defendant, and the question upon which the plaintiff's right to maintain the suit depends is substantially whether a son can, during his father's life-time, sue to obtain the adjudication of a right as reversionary heir to all the existing immovable family property and to have it preserved for his enjoyment at his father's death? If the plaintiff possesses such an interest, it is clear that the decree in the former suit is not a conclusive defence in this suit, as the sole question before determined was that the Act of Limitations had barred the right to sue for a partition.

A son during the life of his father has, as coparcener, a present proprietary interest in the ancestral property to the extent of his proper share; but beyond that he has vested in him no legal interest whatever whilst his father is alive. The father, to the extent of his own share-as coparcener, is entitled to make valid dispositions, and it is not until his death that any interest arises to the son as heir. See *Vírasámi Grámíni* v. *Aiyasami Gramini* (1 M. H. C. Reports 471) and *Palominelappa Kandan* v. *Manuaru Naiken and another* (2 M. H. C. Reports 416.) Except in respect of his

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coparcenery rights, a son is not, we think, in a different position as to the corpus of the ancestral property from that of any other relation who is an heir apparent of the owner of property. The Lower Courts appear to have considered that the plaintiff had acquired a reversionary right in the property. But that right exists only when the possession and enjoyment of property has passed from the owner only for a limited particular estate or interest as in the instance of the succession of a widow to her husband's property. She takes only a life-estate, and the reversionary right to the property passes to the next heirs of the husband subject to certain conditions. But in no view of the present case does it appear that the plaintiff has such a right.

As only son he has a present proprietary interest in one undivided moiety of the property, and nothing more. Consequently, the suit for the establishment of an existing reversionary right in him as heir to the whole property on the death of the defendant, and the decrees declaring such right, are groundless. Though the Act of Limitations has been decided to be a bar to the remedy by suit for a partition, the plaintiff's right as coparcener has not thereby been destroyed, and it may be that he is entitled to relief against the improper disposal by the defendant of more than his right to an undivided moiety of the property. But if so, (and we give no opinion on the point) that relief must be sought in a suit founded on the plaintiff's coparcenery rights and on proof of illegal conduct on the part of the defendant which works an injury to such rights. Our judgment on this point renders it immaterial to refer to the fact pointed out in argument that part of the property is inam land not included in the former suit for partition.

For these reasons, we are of opinion that the decree appealed from must be reversed, and the suit dismissed. The parties will each bear his own costs in both the Lower Courts, but the respondent must pay the appellant's costs of this appeal.